

(1) The statement: “The Administrator of the U.S. Environmental Protection Agency has determined that your locomotive or locomotive engine may be emitting pollutants in excess of the federal emission standards or family emission limits, as defined in 40 CFR part 92. These standards or family emission limits, as defined in 40 CFR part 92 were established to protect the public health or welfare from the dangers of air pollution.”

(2) A statement that the nonconformity of any such locomotives or locomotive engines which have been, if required by the remedial plan, properly maintained and used, will be remedied at the expense of the manufacturer or remanufacturer.

(3) A description of the proper maintenance or use, if any, upon which the manufacturer or remanufacturer conditions eligibility for repair under the remedial plan and a description of the proof to be required of a locomotive or locomotive engine owner to demonstrate compliance with such condition. Eligibility may not be denied solely on the basis that the locomotive or locomotive engine owner used parts not manufactured or remanufactured by the manufacturer or remanufacturer, or had repairs not performed by the manufacturer or remanufacturer.

(4) A clear description of the components which will be affected by the remedy and a general statement of the measures to be taken to correct the nonconformity.

(5) A description of the adverse effects, if any, that an uncorrected nonconformity would have on the performance or operability of the locomotive or locomotive engine.

(6) A description of the adverse effects, if any, that such nonconformity would have on the performance or operability of the locomotive or locomotive engine.

(7) A description of the average effects, if any, that such nonconformity would have on the functions of other locomotive or locomotive engine components.

(8) A description of the procedure which the locomotive or locomotive engine owner should follow to obtain correction of the nonconformity. This shall include designation of the date on

or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor required to correct the nonconformity, and the designation of facilities at which the nonconformity can be remedied.

(9) A telephone number provided by the manufacturer or remanufacturer, which may be used to report difficulty in obtaining recall repairs.

(10) The statement: “In order to ensure your full protection under the emission warranty made applicable to your (locomotive or locomotive engine) by federal law, and your right to participate in future recalls, it is recommended that you have (locomotive or locomotive engine) serviced as soon as possible. Failure to do so could legally be determined to be a lack of proper maintenance of your (locomotive or locomotive engine).”

(b) No notice sent pursuant to paragraph (a) of this section nor any other contemporaneous communication sent to locomotive or locomotive engine owners or dealers shall contain any statement or implication that the nonconformity does not exist or that the nonconformity will not degrade air quality.

(c) The manufacturer or remanufacturer shall be informed of any other requirements pertaining to the notification under this section which the Administrator has determined are reasonable and necessary to ensure the effectiveness of the recall campaign.

#### § 92.708 Records and reports.

(a) The manufacturer or remanufacturer shall provide to the Administrator a copy of all communications which relate to the remedial plan directed to persons who are to perform the repair under the remedial plan. Such copies shall be mailed to the Administrator contemporaneously with their transmission to persons who are to perform the repair under the remedial plan.

(b) The manufacturer or remanufacturer shall provide for the establishment and maintenance of records to enable the Administrator to conduct a continuing analysis of the adequacy of the recall campaign. The records shall include, for each class or category of

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locomotive or locomotive engine, but need not be limited to, the following:

(1) Recall campaign number as designated by the manufacturer or remanufacturer.

(2) Date owner notification was begun, and date completed.

(3) Number of locomotives or locomotive engines involved in the recall campaign.

(4) Number of locomotives or locomotive engines known or estimated to be affected by the nonconformity.

(5) Number of locomotives or locomotive engines inspected pursuant to the remedial plan.

(6) Number of inspected locomotives or locomotive engines found to be affected by the nonconformity.

(7) Number of locomotives or locomotive engines actually receiving repair under the remedial plan.

(8) Number of locomotives or locomotive engines determined to be unavailable for inspection or repair under the remedial plan due to exportation, scrapping or for other reasons (specify).

(9) Number of locomotives or locomotive engines determined to be ineligible for remedial action due to a failure to properly maintain or use such locomotives or locomotive engines.

(c) If the manufacturer or remanufacturer determines that the original answers for paragraphs (b)(3) and (b)(4) of this section are incorrect, revised figures and an explanatory note shall be submitted. Answers to paragraphs (b)(5), (b)(6), (b)(7), (b)(8), and (b)(9) of this section shall be cumulative totals.

(d) Unless otherwise directed by the Administrator, the information specified in paragraph (b) of this section shall be included in quarterly reports, with respect to each recall campaign, for six consecutive quarters beginning with the quarter in which the notification of owners was initiated, or until all nonconforming locomotives or locomotive engines involved in the campaign have been remedied, whichever occurs sooner. Such reports shall be submitted no later than 25 working days after the close of each calendar quarter.

(e) The manufacturer or remanufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files,

lists of the names and addresses of locomotive or locomotive engine owners:

(1) To whom notification was given;

(2) Who received remedial repair or inspection under the remedial plan; and

(3) When eligibility for repair is conditioned on proper maintenance or use, that were determined not to qualify for such remedial action.

(f) The records described in paragraph (e) of this section shall be made available to the Administrator upon request.

(g) The records and reports required by this section shall be retained for not less than eight (8) years.

EFFECTIVE DATE NOTE: At 63 FR 19069, Apr. 16, 1998, §92.708 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

### § 92.709 Public hearings.

(a) *Definitions.* The following definitions shall be applicable to this section:

(1) *Hearing Clerk* shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) *Intervenor* shall mean a person who files a petition to be made an intervenor pursuant to paragraph (g) of this section and whose petition is approved.

(3) *Manufacturer or remanufacturer* refers to a manufacturer or remanufacturer contesting a recall order directed at that manufacturer or remanufacturer.

(4) *Party* shall include the Environmental Protection Agency, the manufacturer or remanufacturer, and any intervenors.

(5) *Presiding Officer* shall mean an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930).

(6) *Environmental Appeals Board* shall mean the Board within the Agency described in §1.25 of this chapter. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this subpart. Appeals directed to the Administrator, rather than to the Environmental Appeals Board, will not be